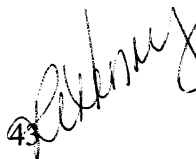


Memorandum

To : Mr. Ramon J. Hirsig,
Executive Director – MIC: 73

Date: December 2, 2004

From : Randie L. Henry, Deputy Director
Sales and Use Tax Department – MIC: 43



Subject : Regulation 1610, *Vehicles, Vessels, and Aircraft*
Chief Counsel's Rulemaking Calendar – December 14, 2004

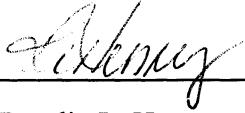
I am requesting your approval to place proposed amendments to Regulation 1610, *Vehicles, Vessels, and Aircraft*, on the Chief Counsel's Rulemaking Calendar on December 14, 2004, for Board approval.

The proposed amendments would:

1. Amend title of subdivision (e) to refer to vehicles, vessels, and aircraft, delete existing text of subdivision (e), and replace with text referencing subdivision (b)(5) of Regulation 1620. Subdivision (b)(5) of Regulation 1620 incorporates the provisions of SB 1100 (Stats. 2004, Ch. 226), which amended section 6248 of the Revenue and Taxation Code. This section is operative October 2, 2004, and provides that, until July 1, 2006, it is rebuttably presumed that a vehicle, vessel, or aircraft purchased outside this state and brought into California within 12 months from the date of purchase is purchased for use in California and is subject to California use tax, except as specified.
2. Make capitalization changes due to changes in citation conventions since the regulation was originally drafted.

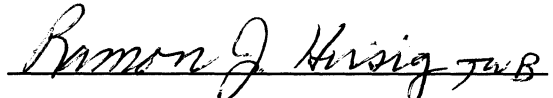
The regulation will be amended in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process. If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Recommendation by:



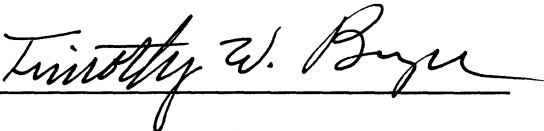
Randie L. Henry
Deputy Director, Sales and Use Tax Department

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Jerry Cornelius (MIC 44)
Ms. Susanne Buehler (MIC 40)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

Reference: Sections 6006, 6010, 6202, 6271-6294, 6366.2, 6422.1, 6451, 6455, 6485.1, 6514.1 and 6591, Revenue and Taxation Code.

(a) DEFINITIONS. For purposes of this regulation the following definitions govern:

(1) "VEHICLE." "Vehicle" means:

(A) Any device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks and excepting a device that is not required to be registered under the Vehicle Code. "Vehicle" does not include a mobilehome or commercial coach required to be registered under the Health and Safety Code. "Vehicle" includes trailer coaches which are required to be registered with the Department of Motor Vehicles.

(B) Off-highway motor vehicles subject to identification under Division 16.5 (commencing with ~~S~~section 38000) of the Vehicle Code. "Vehicle" does not include automatic bale wagon.

(2) "VESSEL." "Vessel" means any boat, ship, barge, craft, or floating thing designed for navigation in the water, except:

(A) A seaplane.

(B) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

(C) A watercraft of a type designed to be propelled solely by oars or paddles.

(D) A watercraft eight feet or less in length of a type designed to be propelled by sail. A motor or other component of a vessel shall be deemed to be a part of the vessel when sold therewith.

(3) "AIRCRAFT." "Aircraft" means any contrivance designed for powered navigation in the air, except a rocket or a missile. "Aircraft" includes an airframe or a fuselage even without an engine.

(b) APPLICATION OF TAX.

(1) Sales tax does not apply to:

(A) Sales of vehicles other than off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code, when the retailer is not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of ~~S~~section 11615.5 of the Vehicle Code,¹ or

(B) Sales of off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code when the retailer is not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of ~~S~~section 11615.5 of the Vehicle Code,¹ nor required to hold a seller's permit by reason of the number, scope and character of the person's sales of such off-highway vehicles, or

(C) Sales of vessels and aircraft by a person not required to hold a seller's permit by reason of the number, scope, and character of the person's sales of such vessels or aircraft, as the case may be.

Except as otherwise provided herein, the purchaser must pay use tax measured by the sales price of the property to the purchaser.

(2) Neither sales tax nor use tax applies to the sale or use of:

(A) Vehicles, vessels, and aircraft sold by the parent, grandparent, grandchild, child, or spouse of the purchaser, or by the brother or sister of the purchaser if both are under the age of 18 and are related by blood or adoption, where the seller is not engaged in the business of selling the type of property for which the exemption is claimed. Claimants of this exemption must submit satisfactory evidence of relationship.

¹ Section 11615.5 of the Vehicle Code requires a licensed lessor-retailer to pay sales tax with respect to the retail sale of a motor vehicle, except a sale to the lessee of the vehicle, if the lessor-retailer files a report of sale with the Department of Motor Vehicles.

(B) Vehicles purchased out of state by a member of the armed services on active duty and delivered to the service member out of state if the purchase is made prior to the effective date of discharge from the service and the service member's intention to use the vehicle in California results from official transfer orders to California and not from the service member's own independent determination. The service member will be considered to have made an independent determination to use the vehicle in California if the contract to purchase the vehicle is made after the service member receives official transfer orders to California or if at the time the contract to purchase the vehicle is made the service member arranges to take receipt of the vehicle in California.

(C) Vehicles, vessels, and aircraft when included in any transfer of all or substantially all of the property held or used in the course of business activities of the transferor and when after the transfer the real and ultimate ownership remains substantially similar.

(D) Operative January 1, 1990, a new, noncommercial motor vehicle manufactured in the United States and sold to a resident of a foreign country who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the United States, if:

1. the purchaser is issued an in-transit permit by the California Department of Motor Vehicles pursuant to Section 6700.1 of the Vehicle Code, and

2. prior to or at the end of 30 consecutive days from the first date of operation under the in-transit permit, the motor vehicle is delivered or shipped to a point outside the United States by the retailer, by means of:

a. facilities operated by the retailer, or

b. a carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export. As used herein, the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers.

Retailers must obtain and retain evidence of export to support deductions taken under this section. Examples of evidence of export of vehicles which are driven to a foreign country by employees of the retailer include but are not limited to, employees' expense claims, fuel purchase receipts, and motel receipts. Examples of evidence to support deductions for exports by other than the retailers' facilities include but are not limited to, bills of lading and import documents of a foreign country.

If a vehicle is not removed from this country as required above, the retailer will be subject to payment of the sales tax as well as fees and penalties as specified in Section 6700.1(a) of the Vehicle Code. Section 6700.1(i) of the Vehicle Code provides that if the conditions of the in-transit permit are not met, the manufacturer of the new motor vehicle sold to a foreign purchaser under the above conditions will reimburse the retailer for an amount equal to the sales tax and registration fees and penalties paid by the retailer. Such amounts received by the retailer from the manufacturer of the vehicle are not considered part of the gross receipts from the sale of the vehicle.

(c) PAYMENT OF TAX BY PURCHASER.

(1) VEHICLES. Purchasers of vehicles, including off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code, the sales of which are exempt from sales tax under (b)(1), above, shall pay tax to the Department of Motor Vehicles, acting for and on behalf of the Board, at the time of making application for registration or identification, except:

(A) When the applicant establishes that the tax is inapplicable under the general exemptions in (b)(2) above.

(B) When the applicant furnishes to the Department of Motor Vehicles a use tax exemption or tax clearance certificate issued by the Board.

A purchaser may pay the use tax and penalty, if any, to the Department of Motor Vehicles so as to secure immediate action upon the purchaser's application for registration or identification and thereafter apply through the Department of Motor Vehicles to the Board for a refund of the amount so paid.

Except when a vehicle, required to be registered under the Vehicle Code is purchased outside this state from a manufacturer or a vehicle dealer, whenever the purchaser of such a vehicle is required to pay use tax to the Department of Motor Vehicles, the sales price shall be presumed to be an amount equal to the market value of the

vehicle at the time of the purchase as that value is determined to measure vehicle license fees imposed under part 5 of division 2 of the Revenue and Taxation Code, multiplied by a factor of 1.2 for a noncommercial vehicle, including a passenger vehicle, as defined in section 465 of the Vehicle Code; or by a factor of 1.8 for a commercial vehicle as defined in section 260 of the Vehicle Code. Commercial motor vehicles under 6,001 pounds unladen weight and commercial trailers under 2,000 pounds unladen weight shall be treated as noncommercial vehicles for the purposes of this regulation. The presumption may be rebutted by evidence which establishes that the sales price was other than such amount.

The measure of tax on the purchase of an off-highway vehicle subject to identification under Division 16.5 of the Vehicle Code is the sales price.

The measure of tax on a purchase of a vehicle from a bona fide dealer outside this state is the sales price and is payable to the Department of Motor Vehicles.

If the purchaser of a vehicle makes an application to the Department of Motor Vehicles which is not timely, and is subject to penalty because of delinquency in effecting registration or identification or transfer of registration or identification of the vehicle, the purchaser then becomes liable also for penalty as specified in section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser of a vehicle does not make application to the Department of Motor Vehicles, or does not pay the amount of use tax due, or files a return with the Board under ~~Section~~ 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with ~~Section~~ 6451) of the Revenue and Taxation Code.

Any purchaser of a vehicle who registers it outside the state for the purpose of evading the payment of taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle.

(2) VESSELS AND AIRCRAFT.

(A) AIRCRAFT AND DOCUMENTED VESSELS. Except as provided in subdivision (c)(2)(C), purchasers of aircraft or documented vessels from any person other than a person required to hold a seller's permit by reason of the number, scope, and character of the person's sales of documented vessels or of aircraft, as the case may be and not otherwise specifically exempt shall report and pay tax to the ~~to the~~ Board. A documented vessel means a vessel which is required to be documented by the United States Coast Guard and for which the United States Coast Guard has issued a valid marine certificate.

A purchaser who holds a seller's permit, or to whom a consumer's use tax account number has been assigned, must include the tax in the purchaser's return for the period in which the aircraft or documented vessel was purchased.

A purchaser who does not hold a seller's permit, or to whom a consumer's use tax number has not been assigned, shall make a return and pay use tax, measured by the sales price of the vessel or aircraft, on or before the last day of the calendar month next succeeding the month in which a return form is mailed to the purchaser, or the last day of the twelfth month following the month during which the vessel or aircraft was purchased, whichever period expires the earlier.

Any purchaser of a vessel or aircraft who registers it outside the state for the purpose of evading the payment of taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vessel or aircraft.

(B) UNDOCUMENTED VESSELS. Any vessel which is not required to have, and does not have a valid marine certificate issued by the United States Coast Guard is an undocumented vessel.

Purchasers of undocumented vessels, the sales of which are exempt from sales tax under (b)(1) above, shall pay the use tax to the Department of Motor Vehicles, acting for, and on behalf of, the Board pursuant to ~~Section~~ 9928 of the Vehicle Code, at the time of making application for registration except:

1. When the applicant establishes that the tax is inapplicable under the general exemptions in (b)(2)(A) and (b)(2)(C) above.

2. When the applicant furnishes to the Department of Motor Vehicles a certificate of use tax exemption or tax clearance certificate issued by the Board.

3. When, operative January 1, 1996, the applicant has proof of payment of sales or use tax to a broker under the provisions of subdivision (c)(2)(C).

If at the time of registration the purchaser does not have the necessary documentation to establish that tax does not apply but wants to secure immediate action upon his or her application for registration, the purchaser will be required to pay the tax to the Department of Motor Vehicles. If the purchaser can thereafter establish that no tax was applicable, he or she may file with the Board a claim for refund of the tax paid to the Department of Motor Vehicles.

If the purchaser makes an application to the Department of Motor Vehicles which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the undocumented vessel, he or she then becomes liable also for penalty as specified in section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser does not make application to either department, or does not pay the amount of use tax due, or files a return with the Board under ~~Section~~ 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with ~~Section~~ 6451) of the Revenue and Taxation Code.

Any purchaser of a vessel who registers it outside the state for the purpose of evading the taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vessel.

(C) VESSELS AND AIRCRAFT PURCHASED THROUGH BROKERS. Notwithstanding any other provision, when a person purchases a vessel or aircraft, on or after January 1, 1996, from another person through a broker, the purchaser is relieved from the liability for use tax on the transaction only to the extent that he or she:

1. has paid an amount as sales or use tax to the broker, and
2. has obtained and retained a receipt from the broker showing the payment of such tax.

The purchaser is relieved from liability only to the extent of the amount paid, and for which a receipt is provided, but remains liable for any amount of tax later determined to be due. An amount designated as sales or use tax collected by the broker from the purchaser constitutes a debt owed by the broker to the state and the broker shall be liable for that amount as if he or she were a retailer engaged in business in this state required to collect that amount as use tax from the purchaser.

(d) LEASED VEHICLES. (See Regulation 1661 (18 CCR 1661) for application of tax to leases of mobile transportation equipment.)

(1) LEASE OF VEHICLES. The general rules respecting the application of tax to leases apply to leases of vehicles, subject to the following special requirements in the case of vehicles:

If under a lease or rental arrangement a vehicle is to be registered in the name of the lessee only, the lessor may not elect to pay the tax measured by the rental receipts. Under these circumstances, use tax will be collected at the time of registration or transfer of registration to the lessee unless the transfer of registration to the lessee is by a certificated dealer, dismantler, manufacturer, or lessor-retailer, using a Report of Sale, in which case the sales tax will be applicable measured by the sales price to the lessor. If the certificated dealer, dismantler, manufacturer, or lessor-retailer is also the lessor, use tax will be applicable measured by the sales price to the lessor, and must be paid by the lessor to the ~~h~~Board. The following examples illustrate applications of the foregoing provisions and are conditions under which tax may not be paid on rental receipts.

(A) A certificated dealer sells a vehicle to a lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer. The sale is reported to the Department of Motor Vehicles by the dealer and the vehicle is registered in the name of a lessee only. Sales tax is applicable measured by the selling price to the lessor.

(B) A certificated dealer is also a lessor and registers a vehicle in the name of the lessee only. Use tax is applicable measured by the cost of the vehicle to the dealer-lessor.

(C) A lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer leases a vehicle and has it registered in the name of the lessee only.

1. Use tax is applicable if the vehicle was purchased from a bona fide dealer outside this state. The measure of tax is the sales price of the vehicle to the lessor and it is payable by the lessor to the Department of Motor Vehicles.

2. Use tax is applicable if the vehicle was purchased from a person who is not a certificated California dealer, manufacturer, dismantler, lessor-retailer, or a bona fide out-of-state dealer. The measure of tax is the sales price of the vehicle to the lessor and, in the absence of evidence to the contrary, the sales price will be presumed to be an amount determined as in paragraph 3 of (c)(1) above.

Lessors who own vehicles registered in the names of lessees only may have the registration changed to show either the lessor or the lessor and lessee relationship on the registration card. Where this is done they may continue to pay tax measured by the rental receipts. Insofar as the registration is not made pursuant to a retail sale, the change may be made without incurring use tax liability on the transfer of registration. Transfers, however, will be subject to transfer fees imposed by the Department of Motor vehicles.

Lessors who change the registration should notify dealers from whom they purchase the vehicles and to whom they gave resale certificates that the registrations have been changed.

(2) TRANSFER OF A VEHICLE TO A LESSEE BY A LESSOR - PRESUMPTION. It will be presumed that a transfer of a vehicle to a lessee by a lessor, as defined in Section 372 of the Vehicle Code, was a sale for resale if the lessee transfers title and registration to a third party within 10 days from the date the lessee acquired title from the lessor at the expiration or termination of a lease. The presumption may be rebutted by evidence that the sale was not for resale prior to use. "Transfer of title and registration" occurs, for purposes of this regulation, when the lessee endorses the certificate of ownership.

(e) ~~(e)~~ OUT-OF-STATE PURCHASES OF VEHICLES, VESSELS, AND AIRCRAFT — 90-DAY TEST.

Regarding the applicability of tax to the out-of-state purchase of a vehicle, vessel, or aircraft, see subdivision (b) of Regulation 1620 (18 CCR 1620).

~~(1) For the purpose of determining whether a vehicle which is purchased outside California is purchased for use in this state, it is presumed that the vehicle was purchased for use here if it enters California within 90 days after its purchase. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the purchaser did not intend to use the vehicle in this state.~~

~~(2) Prior out of state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the vehicle was purchased for use elsewhere. Prior out of state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the vehicle was not purchased for use in California. Accordingly, when a vehicle is purchased in a foreign country or in another state and is later shipped to California, the period of use for purposes of the 90-day test will be measured by the interval from the time the purchaser takes possession at the out-of-state point to the time when the vehicle is delivered to a shipping agent or placed in storage for shipment to California.~~